IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 191 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TARABEN MANSUKHLAL PALA - Appellant(s)
Versus
LIC OF INDIA - Defendant(s)

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Appearance :
MR MEHUL S SHAH for Appellant
MR HM BHAGAT for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/12/2006

ORAL JUDGMENT

1. Shri Mehul S. Shah, learned counsel for the appellant, Shri H.M. Bhagat, learned counsel for

the respondent.

2. A woman, who suffered widowhood in the year 1973 is before this Court in the year 2006 with a plea that a paltry sum of Rs. 5,000/- to which she was entitled under the insurance policy be allowed in her favour and the respondent Life Insurance Corporation be asked to make payment of the money.

3. The short facts necessary for disposal of the present appeal are that one Mansukhlal Chunilal Pala of Jamnagar opted for life insurance policy for sum of Rs. 5,000/-, the policy was issued in favour of the deceased on 8.8.73 under the concluded contract. Unfortunately, the said Mansukhlal Chunilal Pala died on 20.12.73, i.e., within a period of four months and 12 days from the date of issuance of the policy. The widow, who was hapless and helpless, relying upon the assurances of the Corporation, lodged her claim, after some good hassle and the inquiries, the respondent-Corporation repudiated the claim on 28.5.75 stating inter alia that the proposal form submitted by the deceased contained mis-

statements of facts, material facts were suppressed and the facts which had material bearing on the contract were also suppressed. They accordingly rejected the claim. The plaintiff being aggrieved by the conduct of the insurer filed Regular Civil Suit No. 717 of 1976. On notice, the respondent-Corporation appeared in the court and showed its benevolence by contesting the litigation tooth and nail, its logo "*Yogakshemam Vahamyaham*" which was translated in different words by saying that *Mam Anusmar Yuddhyacha* "remember me and fight". They filed their written statement raising various pleadings including the plea that material facts were suppressed, the proposal could be repudiated within two years either for no reason or for some reason. The learned trial court, after casting issues granted proper opportunity to the parties to lead evidence, the parties accordingly led the evidence. After hearing the parties, the learned trial court decreed the suit. The respondent-Corporation did not accept the said judgment

with grace, but thought prudent to file an appeal against the said judgment so that the big amount of Rs.5,000/- could be saved in favour of the Life Insurance Corporation. They wanted assurance in their favour that they are not required to make the payment and that the suit of the plaintiff is dismissed. The assurances given to the common public or the policy holders proved futile and the present appellant-plaintiff was required to appear before the learned first appellate court to contest the litigation.

4. The learned first appellate court in Regular Civil Appeal No. 57 of 1981 held that the learned trial Judge was absolutely right in holding that suppression of facts, if any, was not of material fact, but, however, the court observed that in case on hands, as the period of two years had not passed from the date of the concluded contract, provisions of Section 45 would not apply and for any reason, the contract/claim could be repudiated. After expressing its sympathy to the present

appellant/plaintiff, it allowed the appeal and dismissed the suit. Being aggrieved by the said judgment and decree of the first appellate court, the appellant plaintiff is before this Court.

5. The appeal has been admitted for hearing the parties on the following substantial questions of law:-

> *"[1] Whether in facts and circumstances, Section 45 of the Insurance Act is applicable?*
> *[2] Whether there was any suppression of material facts by the insured?"*

6. Shri Mehul S. Shah, learned counsel for the appellant has placed his strong reliance upon the judgments of the Supreme Court, firstly in case of *Life Insurance Corporation v. Smt. G.M. Channabasemma [AIR 1991 SC 392]* to contend that though Section 45, in terms, may not apply if the repudiation is within two years, but the principles underlying Section 45 will have to

be adhered to, secondly, on the judgment in the matter of *Life Insurance Corporation v. Asha Goel and another [AIR 2001 SC 549]* to contend that the repudiation of the claim by the insurer merely on the ground that the deceased had withheld some correct information relating to his health at the time of insurance with Corporation would not be proper. According to him, the Supreme Court had observed that repudiation of the policy should not be dealt with in the mechanical and routine manner, but should be one of extreme care and caution.

7. According to him, in the present case, in view of the findings recorded by the two courts that there was no suppression of material fact, the learned first appellate court was not justified in dismissing the suit.

8. On the other hand, Shri H.M. Bhagat, learned counsel for the respondent Corporation submits that Section 45 would apply to a case where repudiation is beyond a period of two years. In such a case a heavy duty is cast upon the insurance company to satisfy the Court that

the documents supplied along with the proposal were inaccurate, that such statement was material or the insured suppressed facts which were material to disclose and that it was fraudulently suppressed by the policy holder and that the policy holder knew at the time of taking the policy that the statement was false or that he would be suppressing the facts which it was material to disclose. According to him, restriction contained in Section 45 of the Insurance Act, 1938 would not apply to a case where repudiation is within two years.

9. He has referred to the statements of the doctors examined on behalf of the Insurance Company and contended that the doctors had opined in the court that a case of simple gastro-enteritis could lead to death. When this Court asked Mr. Bhagat to support the said statement of the said doctor [witness] by any medical authority, Mr. Bhagat said that he was simply relying upon the statement of the doctor. He also stated that if the statement of the doctor were that the insured was spitting blood and if such material

fact was suppressed, then contract's foundation in itself would be a fraud and in such case, the Corporation is entitled to repudiate the contract. When this Court asked Mr. Bhagat to read the said statement of the witnesse, who had stated that the deceased was spitting blood and that whether the deceased was spitting blood before the policy or after the policy, Mr. Bhagat made a categorical statement in the Court that he was making that statement on strength of some notes. He then read the statement of the witness wherein it was stated that just before the death the insured when was hospitalized was spitting blood. In fact, it was nobody's case that at the time of insurance policy the insured was spitting blood. This Court must record its displeasure and say that it was an attempt to mislead the Court to obtain a favourable order. It is not expected of a counsel who is practicing in the High Court to make a loose statement on basis of some impressions formed on basis of some notes. When wrong statements are made on basis of some impressions, they

create bad impressions. I must also record that the statement which does not find support from anywhere was pressed into service to oppose the appeal.

10. Mr. Bhagat next contended that ordinarily, the Insurance Corporation is very benevolent, but in the present case, they had sufficient material and substantial reasons to repudiate the claim. According to him, when the material facts are suppressed, then the Insurance Corporation would be entitled to repudiate the claim. When this Court asked Mr. Bhagat that why for a paltry sum of Rs. 5,000/- a giant is fighting against David, Mr. Bhagat simply stated that it is a matter of policy.

11. I must also record the manner in which the Insurance Corporation is contesting the litigation tooth and nail. They are fighting against a poor widow as if they are to lose the heavens. The Insurance Company is a public body, officers sitting there and who enjoy best of the perks are enjoying it at the cost of the general public. A person who is caretaker of

the public money should not become the undertaker of the public.

12. In the present matter, three questions in the proposal form, the replies of which were bone of contention were questions no. 18-D, 22-B and 22. The same are as under:-

	Questions	Answers
18-D	Have you ever suffered from any of the following ailments? Spruce, jaundice, anemia, piles, dysentery, cholera, abdominal pain, appendicitises, or any disease of stomach liver, spleen or intestines?	No.
22-B	Have you remained absent from your work on grounds of health during the last two years, if so, state when how long and for what ailments?	No
22.	State the name and address of every medical practitioner whom you have consulted during the last five years, give particulars regarding nature of ailments, dates and education.	Nil

The question 18-D was relating to information about ailments which the insured had suffered. Question 22-B related to sick leave and question 22 was in relation to the information of the medical practitioner who had been consulted during last five years. In two of the questions

the deceased had stated “No”, meaning thereby that he did not suffer with Spruce, jaundice, anemia, piles, dysentery, cholera, abdominal pain, appendicitises, or any disease of stomach liver, spleen or intestines.

12. True it is that the deceased was treated for amebic colitis from 13.10.72 to 27.10.72. amebic colitis is a disease which is caused by the amebia which goes up to colons and causes irritations. It is to be noted that the patient suffering with amebic colitis does not suffer abdominal pain, it is an irritation and sometimes only it leads to dysentery [not diarrhoea].

13. In India, where pollution is in abundance, potable water is not available for drinking, air is polluted with dust, diesel and petrol, almost about 30 per cent of the citizens of the country suffer with allergy and such other ailments like cold and cough. Most of the people in this country, who do not have the job have to sleep with hungry stomach. They suffer abdominal pain of hunger, but that is not a disease, that is

their misfortune. The people who have to drink water from the pot-holes, running rivers or from some polluted channels cannot make any complaint to anybody because that is their fate. If such people develop some ailment, they take it to be a gift of God, they say that God is so merciful that all odds of life still allow them to live and lead their life. Some ailments which become common do not continue to be ailments in their true sense, they become part of the life and one has to live with it. If somebody has to suffer pain in the neck, for the rest of the life, he cannot say goodbye to it.

14. In the present matter, the two courts below found that suppression of facts, if any, was not of material fact. If that be so and if those findings have not been challenged before this Court even by making an application under proviso to Rule 22 of Order 41, the findings must be taken to be binding against the interest of the colossal Corporation.

15. Section 45 of the Insurance Act, 1938 reads as under:-

"45. Policy not to be called in question on ground of mis-statement after two years.-- No policy of life insurance effected before the Commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy-holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose.

Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to

be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal."

16. Provisions contained in Section 45 of the Act have been explained by the Supreme Court in the two judgments on which Shri Mehul S. Shah has placed his reliance. In each of the case, death was within two years and in each of the case, claim was repudiated, but the Supreme Court observed that in each of the case, the Insurance Corporation must be held answerable to satisfy the claim.

17. In the opinion of this Court, the Insurance Corporation cannot be allowed to say that if they propose to repudiate the claim within a period of two years, then they do not need any foundation or reasons and by exercising their whims, caprice or arbitrariness or by becoming a dictator in their ivory chambers they can repudiate the claim. The repudiation of the claim must be based on a logical foundation, it must have some reason behind it, it must have a

logical support. Insurance Corporation cannot be allowed to build castles in the air, it must first create a foundation and then resist the claim.

18. Unfortunately, the submission made by the learned counsel for the respondent does not meet the reality of the law and law of life.

19. Section 45 does not say that in a case where policy is required to be called in question within two years, then Insurance Company or the respondent corporation would be entitled to challenge it just because they desire or propose to challenge it. Present may not be the case where burden of proof, rather onus of proof would not be so heavy upon the respondent-Corporation as it is under Section-45, but it would still be necessary for the respondent to show that suppression was of some fact which had material bearing and suppression was of an ailment or disease which could lead to death. In any case, the Corporation would be required to prove that the said cause or fact was within the knowledge of the deceased.

20. The Corporation just for nothing can be allowed to say that they repudiate the claim. If a healthy man suffers a massive heart stroke and dies within four months of the policy can the Corporation be allowed to repudiate the claim. If the Insurance Corporation is allowed to repudiate the claim in such a case, it would not only be improper but it would be inhuman and cruel. The Insurance Corporation, nowhere says that the deceased did know that the disease was so grave or serious that it could lead to death. Even the doctor examined by the Insurance Corporation chose to support the case of the Corporation and said that a single stroke of Gastro-enteritis could lead to death. Unfortunately, there is no medical support behind such tall claim and the wide knowledge. A doctor's statement would be an expert's opinion and in a case where he does not give his positive opinion, but simply says that the death could be a probability, then further evidence was required to be brought on record that in all possibilities, death would be

inevitable in case a person had suffered stroke of gastro-enteritis or a repeat of amebic colitis. It is nobody's case that prior to issuance of the insurance policy, the deceased knew that he was suffering with peptic ulcer. It is not even the case of the respondent that peptic ulcer had already developed to the deceased prior to taking of the policy. A simple statement that he was spitting blood at the time of hospitalization before the death would not be sufficient unless it is proved that before issuance of the policy the deceased was spitting blood.

21. The cause which can persuade the Corporation to cancel or repudiate the policy should not only be a cause which is material, but at least, should have some connection between the disease and the death. If a man abruptly suffers brain stroke or abruptly suffers sun's stroke or suffers with cold and dies, then in such cases, the Corporation would not be allowed to say that the nominee would not be paid the money. The life is strange, a man thinks to survive for 100

years less knowing that he may die the very next minute.

22. A person opts for insurance on the assurance of the Insurance Corporation that not only his present would be a pleasure, but if he survives to receive fruits of the policy, he would be happier and in case of his death, at least his successors/legal representatives would be provided something to survive with. Good assurance will not be any service by saying that the Corporation is benevolent, it should be real and actual service and by providing real or good support to those who await some money.

23. In the present case, the respondent Corporation has miserably failed in showing connection between the ailment which was suppressed and the cause of the death.

24. A reason for repudiation be genuine, it cannot be created or manufactured. Insurance Corporation should not have the approach of Shylock that it would have a pound of flesh and would leave a person to die bleeding. In the present case, the Insurance Corporation acted

inhuman.

25. In the opinion of this Court, the learned first appellate court was absolutely unjustified in observing that in case of repudiation within two years, no cause is required to be shown. In the opinion of this Court, the approach is patently illegal.

26. In a given case, if somebody gives wrong information about his education, his caste, his residence or about his marital status or about his parents, can it be said that such suppressions were of material facts. Can it be said that even in a case where some wrong statement is made about the caste of the person, the Insurance Corporation would be entitled to repudiate the claim? Logical approach, rational view and human consideration are the requirements in cases where a person dies.

27. Learned counsel for the respondent further submits that Section 45 would not be applicable to a case where repudiation or cancellation is within two years. According to him, after lapse

of two years, burden would be upon the Corporation. He submits that the respondent Corporation has led sufficient evidence to come to the conclusion that the man was suffering with serious illness. I have already discussed this issue earlier. The evidence led by the Corporation was an eyewash, they brought concocted witnesses. The witnesses who were under the oath to serve the humanity helped and assisted the Corporation as their paid servants. The doctor made tall claims without any foundation. The Court should not be a silent spectator, the Court should not sit in closed iron curtain and decide the matter on the material produced before it without appreciating the effect of such evidence. The Court is supposed to be alive, alive to the life, alive to the world, alive to the changes in the scenario all around it and changes in the law. Pragmatic approach is the requirement of the day and the days of dogmatic approach are gone.

28. In the present case, on one side, submission of the Corporation is that they are very

benevolent, but at the same time, even at the second appellate stage, contest is not small.

29. Taking into consideration the totality of the circumstances, I am of the opinion that the learned first appellate court was absolutely unjustified in setting aside the judgment and decree passed by the trial court. The appeal is allowed. The Judgment and decree of the first appellate court are accordingly set aside. It is hereby directed that the respondent shall pay sum of Rs. 5,000/- with all accrued benefits to the present appellant at their earliest with 9% compound interest from the date of the lodgment of the claim. If the amount is not paid within three months from today, the respondent would be liable to pay 15% compound interest from the date of the claim.

30. The appellant would also be entitled to costs of the litigation throughout. For the present appeal, the cost is fixed at Rs. 5,000/- [Rupees Five Thousand only].

31. Let a decree be framed accordingly.

[R.S. GARG, J.]

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